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EXAMINER

WINTER, JOHN M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CATHERINE LIN-HENDEL

Appeal 2009-004660
Application 09/833,956
Technology Center 3600

DECISION ON APPEAL¹

Before, HUBERT C. LORIN, JOSEPH A. FISCHETTI, and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 18-38. Claims 1-17 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM-IN-PART.

THE INVENTION

Appellant claims a method for commercial transactions conducted over a computer network, and more particularly to a system and method for selecting and purchasing a plurality of items on such a network. (Specification 1:5-7).

Claim 18, reproduced below, is representative of the subject matter on appeal.

18. A method for conducting on-line commerce, comprising the steps of:
 - providing a software-based interface configured to enable a user to selectively designate a plurality of different items to be purchased in a single search, wherein the software-based interface enables the user to selectively designate the plurality of different items without searching for each different item of the plurality of different items one item at a time;
 - receiving from the user selective designations of the plurality of different items designated by the user through the interface;
 - searching, during the single search, for all of said plurality of different items on a plurality of data sources;
 - displaying information found during the single search regarding said plurality of different items; and
 - purchasing on-line all or some of said plurality of different items.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

The following rejection is before us for review.

Wells	US 6,711,586 B1	Mar. 23, 2004
Gavarini	US 7,080,070 B1	July 18, 2006

The Examiner rejected claims 18-38 under 35 U.S.C. § 103(a) as being unpatentable over Gavarini in view of Wells.²

ISSUE

Has Appellant shown that the Examiner erred in rejecting claims 18-38 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Gavarini in view of Wells on the grounds that a person with ordinary skill in the art would understand that in Wells, once the primary selection is presented to the user, a user is presented with a selection of different items (110a-110f) such that the selection of one of those different items results in a display of a plurality of different items from a single search as shown in Figure 2B?

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Examiner found that Gavarini discloses:
providing a software based interface configured to enable
a user to selectively designate a plurality of different

² The Examiner withdrew the rejection based on 35 U.S.C. § 112, First Paragraph. (Answer 11).

items to be purchased in a single search, wherein the software based interface enables the user to selectively designate the plurality of different items without searching for each different item of the plurality of different items one item at a time; (Column 2, lines 23-60) (Answer 3).

2. Gavarini at col. 2 ll. 23-60 (FF 1) discloses:

Categories created by customers through this method are made available as personal categories (preferably presented as additional hyperlinks on the categories page) for the respective customers. When a category is selected for viewing, the corresponding query is applied to the merchant's database and the results presented to the user. Thus, any item additions by the merchant are automatically incorporated into the preexisting categories. (col. 2, ll. 33-41).

3. Gavarini discloses a customer interface 51 which resides on and is presented by a web server 78. (col. 5, ll. 42-47).

4. The Examiner found that “Garavini ('070) does not explicitly disclose searching, during the single search, for all of said plurality of different items on a plurality of data sources” and thus relies on Wells for this teaching. (Answer 4).

5. Appellant’s Specification does not specifically define the term “data source”, nor does it utilize the term contrary to its customary meaning.

6. Wells discloses receiving by “...the Web server 15 if, for example, the user double clicks on one of associated selections 110a-f. FIG. 2b shows a second Web page 140 transmitted after the first primary information selection 105 has been updated to replace SCREAM with associated information selection 110f relating to the movie PSYCHO.” (col. 7, ll. 38-43).

7. The ordinary and customary definition of the term “some” as defined by Merriam Webster’s Collegiate Dictionary (10th ed.) is: one indeterminate quantity, portion or number as distinguished from the rest.

ANALYSIS

We affirm the rejection of claims 8-20, and 22-38 and reverse as to claim 21.

Appellant maintains that the independent claims require that a plurality of different items be selectively designated by the user, and, in contrast, Wells’ selections are not selected by the user nor do they constitute a plurality. (Appeal Br. 10).

We disagree with Appellant because Appellant is attacking the Wells reference individually when the rejection is based on a combination of references including Gavarini. *See In re Keller*, 642 F.2d 413 (CCPA 1981). The Examiner found that Gavarini and not Wells discloses “providing a software based interface configured to enable a user to selectively designate a plurality of different items to be purchased in a single search, wherein the software based interface enables the user to selectively designate the plurality of different items without searching for each different item of the plurality of different items one item at a time.” (FF 1). This has not been disputed by Appellant. We further find that Gavarini discloses a user who selects categories as additional hyperlinks (FF 2). The Examiner admits “Garavini ('070) does not explicitly disclose searching, during the single search, for all of said plurality of different items on a plurality of data sources”, and thus relies on Wells for this teaching (Answer, 4) (FF 4). We also find in Wells, once the primary selection is presented to the user, the user then is presented with a plurality

of different items (110a-110f), the selection of one of those items results in the display from a single search- the results of which are shown in Figure 2B (FF 6). Based on these findings, we do not find error in the combination of Gavarini and Wells as applied to claim 18.

Appellant next argues that Wells fails to disclose searching on a plurality of data sources. (Appeal Br. 12). In so arguing, Appellant maintains that since Wells does not disclose more than one database used as a source, the Examiner's position "...that multiple web pages can be construed as multiple data sources" is misplaced (Appeal Br. 12). We disagree with Appellant because Appellant's Specification does not specifically define the term "data source", nor does it utilize the term contrary to its customary meaning (FF 5). Both Gavarini and Wells disclose using hyperlinks to link to new pages (FF 2, 6). We thus find that a person with ordinary skill in the art looking to Wells' teaching of enabling a user to double click to competing movie content (FF 6) would entail linking to another server where the competing movie and its trailer would be located, and thus do not find error with the Examiner's rejection. In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *See KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Regarding Appellant's arguments to the claimed interface feature (Appeal Br. 13) we find that Gavarini discloses a customer interface 51 which resides on a web server 78 thus meeting the claim requirements. How the interface 51 is

configured is done in accordance with the above findings as modified by the teachings of Wells under the provisions of 35 U.S.C. § 103(a).

Appellant argues error in the rejection of claim 34 because claim 34 calls for the “simultaneous on-line purchase of at least some items requires simultaneous purchase of at least two different items.” (Appeal Br. 15). We disagree with Appellant. We find that the purchase of one of the movies offered by Wells in Figures 2a or 2b constitutes a purchase of some (FF 7) of the offered movies because the selection of even a single movie makes determinate an otherwise indeterminate choice over not buying the movie at all.

In rejecting claim 21, the Examiner cites to the Abstract of Gavarini for the corresponding recited features. (Answer 5). However, we find on review of the Abstract, Gavarini does not disclose or infer the first and second separate searchable web sites recited in claim 21. Therefore, we will not sustain the rejection of claim 21.

Appellant argues that the disclosure in Gavarini of alphabetic browsing does not meet the limitation of claim 28 requiring searching the plurality of data sources in a prioritized order specified by the user. We disagree with Appellant because by the user specifying searching alphabetically, this gives priority of one category over the other based on a given letter placement of the categories involved in the search in Gavarini.

Regarding claims 33 and 36, Appellant argues that “there is no mention [in Gavarini] of more than one item [being purchased], or of placing a single order for a plurality of different items.” (Appeal Br. 18). We do not find this argument

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persuasive because we do not interpret claim 33 as positively reciting that a plurality of different items are being purchased. Rather, claim 33 only uses the terms “to be purchased” which does not equate to actual purchases as argued by Appellant.

Regarding claim 38, Appellant maintains that the screen display depicting a dynamic user defined category or merchant defined category, as disclosed by Gavarini does not include presenting to the user a list of items required for a project specified by the user as required by the claims. We disagree with Appellant because we interpret the project items in claim 38 to be those items which are matched by the application to the designated category entered by the user for the purpose of accomplishing a project which the user intends for those products.

CONCLUSIONS OF LAW

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 18-20, and 22-38.

We conclude the Appellant has shown that the Examiner erred in rejecting claim 21.

DECISION

The decision of the Examiner to reject claims 18-20, 22-39 is AFFIRMED.

The decision of the Examiner to reject claim 21 is REVERSED.

AFFIRMED-IN-PART

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